IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 9941 of 2004

For Approval and Signature:

HON'BLE MR.JUSTICE A.R.DAVE
and
HON'BLE MR.JUSTICE K.A.PUJ

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

GUJARAT NARMADA VALLEY FERTILIZERS LTD

Versus

UNION OF INDIA

Appearance:

1. Special Civil Application No. 9941 of 2004
M/S TRIVEDI & GUPTA for Petitioner No. 1-2
MR MA SHAIKH, ADDITIONAL CENTRAL GOVERNMENT STANDING COUNSEL for Respondents.

CORAM : HON'BLE MR.JUSTICE A.R.DAVE
and
HON'BLE MR.JUSTICE K.A.PUJ

Date of decision: 19/10/2004

ORAL JUDGEMENT

(Per : HON'BLE MR.JUSTICE A.R.DAVE)

RULE. Service of Rule is waived by learned Central Government Standing Counsel Shri M.A. Shaikh for the respondents. At the request of the learned advocates, the petition is finally heard today.

2. As an appeal filed by the petitioner is pending before the Commissioner (Appeals) of Central Excise and Customs, Vadodara and the issue involved is only with regard to the amount of pre-deposit, we would not like to say anything on the merits of the matter.

3. The short question which has been involved in the petition is with regard to the amount of pre-deposit. An application for waiver of pre-deposit had been turned down by the Commissioner (Appeals) of Central Excise and Customs under his order dated 27.07.2004 and being aggrieved by the said order, the petitioner has approached this Court.

4. The contention of the petitioner is that the entire work pertaining to preparation of design had been done outside India and the Foreign Agency had supplied the design. In view of the said fact, no service was rendered in India and, therefore, according to the petitioner, no service tax was payable in respect of the said work.

5. Learned Standing Counsel Shri M.A. Shaikh appearing for the respondents has taken a preliminary objection and has vehemently argued that in the matters where discretion with regard to determination of the amount of pre-deposit has been exercised by the appellate authority, this Court should ordinarily not interfere as observed by this Court on 10.09.2004 in the case of STERLITE INDUSTRIES (INDIA) LIMITED V/S. UNION OF INDIA, S.C.A. No. 11489 of 2004. We have considered the said argument. However, looking to the facts of the case, we are of the opinion that the discretion had not been properly exercised by the Commissioner (Appeals) for the reasons stated hereinbelow.

6. Upon hearing the learned advocates and looking to the facts of the case, it appears that the discretion had not been properly exercised by the appellate authority in the matter of determination of the amount of pre-deposit. In view of the order passed by CESTAT in the case of DAELIM INDUSTRIAL CO. LTD. V/S. COMMISSIONER OF C.EX., VADODARA reported in 2003 (155) E.L.T. 457, and confirmed by the Hon'ble Supreme Court and in the matter

decided by CESTAT in case of LARSEN & TOUBRO LTD. V/S. CCE, COCHIN, CESTAT Delhi, reported in 2004 (60) RLT 505, in our opinion, lenient view ought to have been taken while determining the amount of pre-deposit.

7. Looking to the facts of the case, we are of the opinion that it would be just and proper to direct the petitioner to deposit 10% of the amount of assessment within a period of 8 weeks from today. After the said amount is deposited, the Commissioner (Appeals) of Central Excise & Customs shall hear the appeal and shall make an effort to dispose it of as soon as possible. Learned advocate appearing for the petitioner has assured this Court that the petitioner shall extend full co-operation to the Commissioner (Appeals) so that the appeal can be decided at an early date.

8. In view of the above order, the petition stands disposed of as allowed. Rule is made absolute to the above extent with no order as to costs.

9. Learned Central Government Standing Counsel Mr. M.A. Shaikh has requested that implementation of this order should be stayed for a period of four weeks from today. We do not see any justifiable reason for the same and hence, the said request is rejected.

[A.R. DAVE, J.]

[K.A. PUJ, J.]

#Savariya#

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